

E-FILED on 6/18/07

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

DON ROLLAND DONFRAY,  
Plaintiff,

v.

GCFS, INC., d/b/a/ GREATER CALIFORNIA  
FINANCIAL SERVICES, and JOHN  
RAYMOND GRAVES,  
Defendant.

No. C-07-01546 RMW

ORDER DENYING PLAINTIFF'S MOTION  
TO STRIKE AFFIRMATIVE DEFENSE

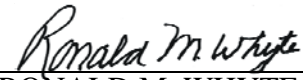
[Re Docket No. 8]

Plaintiff Don Rolland Donfray moves to strike defendant's seventh affirmative defense and for a more definite statement. Plaintiff's claims arise under the Fair Debt Collection Practices Act ("FDCPA"), 15 U.S.C. § 1692 *et seq.*. The affirmative defense at issue is a *bona fide* error defense based on 15 U.S.C. § 1692k. Plaintiff contends that the *bona fide* error defense must be pleaded with particularity under Federal Rule of Procedure 9, which provides, "In all averments of fraud or mistake, the circumstances constituting fraud or mistake shall be stated with particularity." FED. R. Civ. P. 9(b). Plaintiff asks the court to strike the defense as pleaded, and to permit the defendant to replead it with more particularity.

The *bona fide* error defense permits the defendant to prove, if possible, that any actions that resulted in violation of the FDCPA stemmed from a non-intentional *bona fide* error. The court finds

1 that defendants have pleaded the defense with sufficient detail to permit plaintiff to take discovery  
2 on the asserted defense, particularly in light of the further explanation by defendant in its case  
3 management statement and its opposition to this motion. No enhanced pleading is necessary.  
4 Accordingly, the court denies plaintiff's motion to strike.

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6  
7 DATED: 6/18/07

  
RONALD M. WHYTE  
United States District Judge

United States District Court  
For the Northern District of California

1 Notice of this document has been electronically sent to:

2 **Counsel for Plaintiff:**

3 Frederick William Schwinn fred.schwinn@sjconsumerlaw.com

4 **Counsel for Defendants:**

5 Teresa M. La Voie tlavoie@ecplslaw.com

6 Counsel are responsible for distributing copies of this document to co-counsel that have not  
7 registered for e-filing under the court's CM/ECF program.

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9  
10 **Dated:** 6/18/07

/s/ MAG  
Chambers of Judge Whyte